IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.687 of 2007
VISHWANATH PRASAD SINHA
Versus
THE STATE OF BIHAR & ORS
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4 30.09.2008. Heard Sri Ashok Jang Bahadur, learned counsel for the petitioner as well as learned counsel for the State.

In the instant writ petition, the petitioner has prayed for quashing the FIR of Sikandra PS case no.154 of 2007 dated 6.7.2007 for offences under sections 409/34 I.P.C against the petitioner and others as contained in annexure 1 and also for consequential relief arising thereof.

Before this court examine the merits of the case, it would be necessary to notice the facts of the case in brief.

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The petitioner was posted as Executive engineer, Irrigation Division, Sikandara in the district of Jamui from September 2007, till 6.7.2007. On 6.7.2007 one Suresh Prasad Singh, Executive Engineer, Sikandra, filed a written report with the police stating therein that he himself assumed charge of the Executive engineer, Irrigation Division on 4.7.2007 consequent to the notification no. 2881 dated 27.6.2007, issued by the Water Resources Department, as petitioner refused to hand over the charge to him. It has been alleged that petitioner along with others have taken away some valuable and important documents such as cash book, cheque book, including registers. He believes that they would issue cheques in back dates which would cause irreparable loss to department.

Learned counsel for the petitioner submits that even

taking the FIR at the face value, the same would not disclose any cognizable offence. He submits that vide notification dated 27.6.2007 of Water Resources Department, petitioner was transferred from Irrigation Division, Sikandra to Raghopur Irrigation Division and one Sri Sital Chandra Jha was to succeed him, which is also evident from a copy of the notification dated 27.6.2007, annexue 2. The notification also bears that if there is no corresponding posting against incumbent vacancy, then the controlling officer can chalk out make shift arrangement. He submits that the successor of the petitioner has been named in column 3 of the notification itself, as such, there was no occasion for the informant Suresh Prasad Singh, Executive engineer, Irrigation Division, Sikandra, to have assumed charge in haste. It is further case of the petitioner that his successor had not arrived to take charge from him as such he was holding the documents in question. He submits that no FIR can be instituted for an alleged offence to happen in future.

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The allegation contained in the report lodged by Sri Suresh Prasad Singh giving rise to the instant FIR, is in two parts.

The first part of the allegation relates to the refusal of the petitioner to hand over charge to the informant. So far this allegation is concerned, this Court is in agreement with the submission of the learned counsel for the petitioner that the same itself does not disclose commission of any cognizance offence.

Second part of allegation is that the accused persons, namely, the petitioner and others had taken away cash book, cheque

book and allotment registers etc which gave reasonable apprehension to the informant, that the cheques might be misused by ante dating the same or some interpolation may be made in documents causing loss to Government. Learned counsel for the petitioner submits that even this part of allegation also does not attract commission of any cognizance offence. He submits that what precedes an FIR or what may follows after registration of FIR cannot be looked into for purpose of considering the validity of it. It is submitted that the authorities would be within its jurisdiction to institute a case if a preliminary enquiry in respect of an act of omission or commission would have disclosed a cognizable offence.

Learned counsel for the State by referring to para 12 of the counter affidavit states that government's apprehension were correct as petitioner issued nine cheques in back dates showing the date of issuance as 22.6.2007 amounting to rupees 1 crore 14 lacs and odd. It has been stated in para 14 that even the Principal Secretary, Irrigation Department directed the District Magistrate, Jamui not to pass the aforesaid cheques. He submits that the aforesaid facts have transpired in course of investigation also.

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Mere keeping of the relevant documents by a transferred officer for purposes of preserving them, so that they may not fall in unscrupulous hands as his successor has not yet come to assume charge would itself not constitute a cognizable offence. But, if such cheques and documents have been withheld with mens rea of committing a fraudulent act or cheating etc.by issuing cheques in back

dates, a complaint to the police for registration of a case is maintainable. It is early information of alleged criminal activities and needs to be enquired and investigated to find out the truth.

This Court would like to observe here that a preliminary enquiry may be desirable in such circumstances at first instance, but the same would not be a bar for lodging a criminal case in matter of alleged financial irregularities/illegalities.

The State counsel has pointed that sufficient materials have been collected to show that the cheques have been antedated. The material as such collected in course of investigation prima facie supports State's case that cheques and documents were taken away by petitioner and others for ulterior purposes and for causing loss to Government.

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In view of foregoing discussions, I am not inclined to quash the FIR at threshold. The instant application is a pre matured one. The petitioner would be at liberty to move appropriate application, if so advised, after conclusion of investigation and submission of final form.

With the aforesaid observations and liberty, the writ application is disposed of.

Shashi. **(S.P.Singh,J).**